

with regard to the Commissioner's liquidation intentions,¹ the Commissioner is proceeding full speed as if the matter were still within his jurisdiction to implement. Respect for this Tennessee writ, issued by this Court's authority, should have stayed his hand, so it is clear that unless there be early issuance of *supersedeas* to nullify his past orders, he will destroy Sentinel Trust Company.

Unfortunately, if the Commissioner shall continue with his present course, he will obtain bids—and will be prepared to instantly act upon such bids—to sell all Sentinel's "accounts," e.g., contracts under which Sentinel is appointed as trustee and paying agent, so that Sentinel's survival will be made impossible, as occurred in *Boyce v. Williams, Commissioner of Insurance and Banking*, 215 Tenn. 704; 389 S.W.2d 272 (Tenn., 1965), wherein the Supreme Court said, in part:

"Thus, the approval of the merger agreement by the commissioner was not a final adjudication of the right of University to merge.

"Moreover, our merger statutes do not empower the Commissioner with any such authority.

"The powers of the Commission must be found in the statutes. If they are not there, they are non-existent." *Tennessee- Carolina Transp. v. Pentecost*, 206 Tenn. 551, 334 S.W.2d 950 (1960).

"An appeal lies from a final judgment. Thus, as held by the trial judge, the commissioner's action in approving the agreement is not reviewable by the statutory writ of certiorari. However, a final judgment is not a prerequisite to the issuance of the common law writ whenever 'an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the

¹The Constitution (Article VI, § 10), statutes and cases all speak of *certiorari* "removing" cases into the writ-issuing court from the inferior jurisdiction, and it is obvious that when a case is "removed" by the writ, as by an appeal removing a case to the Court of Appeals, a *certiorari* writ removing a case from General Sessions into the Circuit Court, or the acts by which a case is "removed" from a state court into a U. S. District Court, instantly terminates any powers of the "inferior jurisdiction" to continue exercising its discretion, so there should be no question but that the Commissioner of Financial Institutions has lost all power, by virtue of this Court's writ, to continue making and carrying out his liquidation decisions. Some cases speaking of this removal of jurisdiction include *Mayor and Aldermen v. Pearl*, 30 Tenn. 249 (1850), *Jones v. State ex rel. Juvenile Court*, 139 Tenn. 547, 201 S.W. 760 (1918), and *Boyce v. Williams, Commissioner of Insurance and Banking*, 215 Tenn. 704, 389 S.W.2d 272 (1965).

court, there is no other plain, speedy, or adequate remedy.' *State ex rel. Conner* [***10] *v. Herbert*, 127 Tenn. 220, 154 S.W.957 (1912); *Taylor v. Continental Tennessee Lines*, 204 Tenn. 556, [**277] 322 S.W.2d 425 (1959); *Bragg v. Boyd*, 193 Tenn. 507, 246 S.W.2d 575 (1951).

* * *

"University has now been merged with a foreign corporation and we dare say most, if not all, its assets are in a foreign state and out of the jurisdiction of the courts of this state.

"Thus, the courts of this state cannot grant to appellants any effectual relief and to now remand the case for a trial would be a useless gesture on our part. The question of whether the commissioner's approval of the merger should be vacated or whether appellants are entitled to an injunction and a segregation of the assets of University as prayed for in the petition have become moot.

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"Courts 'will not express an opinion in a case in which no practical relief can be granted, or which can have no practical effect.' 1 C.J.S. Actions sec. 17, p. 1015.

"Where 'cases which pending litigation or appeal have become moot will be dismissed as such.' *McCanless, Commissioner, v. Klein*, 182 Tenn. 631, 188 S.W.2d 745 (1945); *State ex rel. Wilson v. Bush*, 141 Tenn. 229, 208 S.W. 607 (1918); *Jones v. Nat. Bank of Com. in Memphis*, 193 Tenn. 126, 244 S.W.2d 430, 431 (1951); *Sobel v. Whittier Corp.*, 195 F.2d 361 (6th Cir. 1952)."

(215 Tenn., at 713, 715-716, 389 S.W.2d, at 277-278)

With the Respondent Commissioner's intense pursuit of the objective of destroying Sentinel Trust Company with all deliberate speed, by transferring all moneys it holds in trust to some competitive company, with his insistence upon the assumption that he has the right to use trust funds for administrative expenses and later make some type of reduced, pro-rata distribution of remaining moneys to a successor to Sentinel's trustee and paying agent functions, for the benefit of trust beneficiaries who are the owners of the almost 100 issues of debenture bonds, his actions threaten to defeat this Court's *certiorari* jurisdiction, as occurred in *Boyce, supra*.

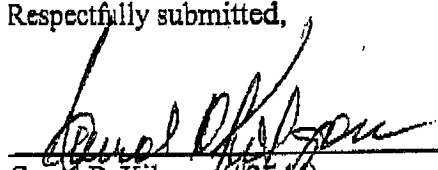
Petitioner asserts that there is no valid legal authority in support of the proposition which is the basic premise of the Respondent Commissioner's illegal actions—that when a corporation holding large amounts of money in trust is placed under a receivership, under whatever law, the

receiver is empowered to utilize not only the corporation's properties, but also to convert to receivership uses the trust funds in which the forcibly-inactivated corporation had no ownership rights whatever, other than bare legal title to be used for trust purposes in accordance with the governing trust instrument. As shown by the supporting affidavits, being challenged to present supporting authority, the Commissioner has presented none.

In the interests of justice and in respect for law, it is vital that the writ of *supersedeas* be issued as soon as possible, after such hearing as the law requires, in order that all the orders issued by Respondent Commissioner may be nullified and his actions in wrongfully withholding from bondholders the semi-annual principal and/or interest payments to which they are entitled—for June 1, June 15, July 1, July 15, and the upcoming one of August 1, 2004—many of which have necessarily been partially deposited by pre-May 18, 2004 deposits into Sentinel's fiduciary account which the Respondent Commissioner has frozen. Such a receiver's lack of any ownership rights to trust moneys held by a trustee whose own business is seized is strongly supported by the holdings and analyses in *Wagner, Trustee v. Citizens' Bank & Trust Co.*, 122 Tenn. 164, 122 S.W. 245 (1909) and in *Caplin, Trustee, v. Marine Midland Grace Trust Co.*, 406 U.S. 416, 92 S.Ct. 1678, 32 L.Ed.2d 195 (1972).

Before the hearing of this motion, Petitioner will have the supporting data thoroughly organized, but at this point it is more essential that the matter be brought to the Court's attention rapidly.

Respectfully submitted,


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